



Award No. 16929
Docket No. DC-17793

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES

NORTHERN PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees on the property of the Northern Pacific Railroad Company for and on behalf of employees represented by this Organization and employed by the carrier at its Paradise, Montana, Lunchroom and Hotel, that they be paid holiday pay as provided in Article III of the Mediation Agreement dated November 20, 1964.

EMPLOYEES' STATEMENT OF FACTS: On or about May 31, 1963, formal notice under the Railway Labor Act was served on the carrier involved in this dispute and all other carriers with which the Organization has agreements. Appendix "A" of that Notice contained a proposal for holiday pay which was disposed of by Article III of the National Mediation Agreement of November 20, 1964. This Article provides:

"ARTICLE III.

**ADJUSTMENT FOR DINING CAR EMPLOYEES-
HOLIDAY PAY**

In addition to the wage adjustments provided for in Article I of this Agreement, effective January 1, 1965, the monthly rates of employees represented by the Hotel & Restaurant Employees and Bartenders International Union shall be adjusted by adding the equivalent of 16 pro rata hours to their annual compensation (the monthly rate multiplied by 12) and this sum shall be divided by 12 in order to establish a new monthly rate. No party to this agreement shall serve any notice or proposal or progress any notice or proposal for the purpose of changing the provisions of this Article III to become effective prior to January 1, 1967."

Carrier refused to apply above-quoted to the employees of its Paradise, Montana, Lunchroom and Hotel who are represented by this Organization and who were covered by the May 31, 1963 Notice; accordingly, Employees made application, under Section 5, First, of the Railway Labor Act, to the National Mediation Board for an interpretation of the Agreement. After several communications in which the parties set forth their respective positions and after, at the Board's request, another attempt was made by the parties to adjust the dispute, the Mediation Board concluded on January 12, 1968, that the subject

Employees represented by the Hotel & Restaurant Employees and Bartenders International Union were excepted from the application of Section 6 of Article II.

Article III of the November 20, 1964 Mediation Agreement reads:

"ARTICLE III.

**ADJUSTMENT FOR DINING CAR EMPLOYEES-
HOLIDAY PAY**

In addition to the wage adjustments provided for in Article I of this Agreement, effective January 1, 1965, the monthly rates of employees represented by the Hotel & Restaurant Employees and Bartenders International Union shall be adjusted by adding the equivalent of 16 pro rata hours to their annual compensation (the monthly rate multiplied by 12) and this sum shall be divided by 12 in order to establish a new monthly rate. No party to this agreement shall serve any notice or proposal or progress any notice or proposal for the purpose of changing the provisions of this Article III to become effective prior to January 1, 1967."

Article III provided for the adjustment of monthly rates of employees represented by the Hotel & Restaurant Employees and Bartenders International Union by the addition of the equivalent of 16 pro rata hours to the annual compensation.

Article III made no provision for adjusting hourly rates of employees represented by the Hotel & Restaurant Employees and Bartenders International Union.

The employees employed in the lunchroom and hotel at Paradise are paid hourly rates pursuant to the December 1, 1951 Agreement. As the November 20, 1964 Mediation Agreement made no provision for the application of Article II to employees represented by the Hotel & Restaurant Employees and Bartenders International Union and as Article III of that agreement applied only to the monthly rates of employees represented by this organization, the holiday provision of that agreement has not been applied to the employees employed in the lunchroom and hotel at Paradise, Montana.

OPINION OF BOARD: Carrier operates a hotel and lunchroom at Paradise, Montana, where they employ six employees, a chef, cook, waitress, etc. at varying hourly rates. These employees are represented by Dining Car Employees Union, Local No. 372 for collective bargaining purposes.

On November 20, 1964, a Mediation Agreement was entered into between Carriers and five Railway Labor Organizations, one of which was the parent union to Local No. 372. There is no question that Local No. 372 and the Carrier in this case are bound by the terms of the aforementioned Agreement. The question in issue is whether these six employees are covered by Article III of the Agreement. This Article reads:

"ARTICLE III.

**ADJUSTMENT FOR DINING CAR EMPLOYEES-
HOLIDAY PAY**

In addition to the wage adjustments provided for in Article I of this Agreement, effective January 1, 1965, the monthly rates of em-

ployes represented by the Hotel & Restaurant Employees and Bartenders International Union shall be adjusted by adding the equivalent of 16 pro rata hours to their annual compensation (the monthly rate multiplied by 12) and this sum shall be divided by 12 in order to establish a new monthly rate. No party to this agreement shall serve any notice or proposal or progress any notice or proposal for the purpose of changing the provisions of this Article III to become effective prior to January 1, 1967."

It is clear from a reading of the above Article that the intent of the Contracting parties was to include only "monthly rated employes" and not "hourly rated employes." It would have been an easy matter to include the latter in its provisions, and indeed the record before us is devoid of any substantial reason as to why such hourly rated employes were not included. We are only left to surmise that this may have been an omission on the part of the Contracting parties, but in the absence of specific language evidencing a clear intent to so include them, this Board is without authority to provide the requisite language. It is a matter for further negotiation. We will deny the claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of January 1969.